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The Compliance Function in Banking: Perspective and Future in
the Age of Globalization

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The Compliance function in banking: perspective and future in the age of globalization

Abstract:

Ethically correct business decisions and the respect for applicable laws and regulations have become in demand for regulators and supervisors, but especially for the general public. For those behaviors to happen, compliance culture is an essential requirement. Through survey research, we prove the existence of a relationship between the workers' level of compliance culture and their hierarchical position, which may indicate communication problems between hierarchies. This area is also given a comprehensive outlook, as the globalization process combined with financial regulatory reforms lead multinational corporations to a more challenging equilibrium between their compliance departments' actions and budgets.

Keywords: *compliance banking culture ethics*

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“It’s not hard to do the right thing; in fact it’s easy. What’s hard is knowing what the right thing to do is. Once you know that, and believe it, doing the right thing is easy.”

Ben Kingsley, “Confession”

Introduction

In light of recent financial and accounting scandals¹, that started in the turn of the 21st century with Enron and WorldCom and carried on into its first decade with AIG, Madoff Investment Securities and most notoriously, Lehman Brothers, financial and political institutions alike have been forced to rethink and rebuild the way the financial sector is supervised and controlled. As these changes take place, the amount of guidelines and regulation banks have to comply to has increased substantially², as has the scrutiny that the general public subjects them to, with such values as transparency and ethical behavior becoming a crucial requirement for bank sustainability³. This has forced banks to substantially change the way they look at Compliance, from a strategic point of view, as the line that distinguishes not only a compliant action from ethical behavior but, most importantly, the one that distinguishes a non-compliant action from unethical behavior has become increasingly blurry.

The growing importance of European and global guidelines, emphasized by an ever smaller world (both technologically and politically) and the amplified strictness from public opinion facing the financial sector, especially after recent developments and its consequences, will make Compliance an increasingly important aspect of business for any bank wanting to remain competitive and relevant.

As we will try to show, compliance is every worker's responsibility and therefore, the strength, uniqueness and coherence of the company's compliance culture (a concept we will study in further detail) will be paramount to conclude on what ethical standards are most commonly used at that organization while making everyday business

¹ CNN Money. 2012. money.cnn.com/2002/01/11/companies/acct_scandals/ (accessed January, 30th, 2012)

² Thomson Reuters. 2012. *The State of Regulatory Reform 2012*

³ Malcolm Hayday. 2012. "Banks must put ethical principles at the heart of their operations". The Guardian. www.guardian.co.uk/sustainable-business/banks-ethics-reform-services

decisions, given the role that emotions play in decision-making⁴. In this Work Project, our goal will be to assess the compliance culture of the institution in which we carried out our Internship. First, we will look to quantify it and, next, we will try to characterize it. That is to say we wish to understand how the bank's employees feel about compliance, and how they position themselves relative to its requirements i.e., do they feel that compliance gets in the way of their daily duties or, rather, they take pleasure in feeling (and knowing) that what they are doing is in compliance to applicable regulation, ethical standards and best practices? To characterize it, we wish to study the main dimensions of a compliance culture – knowledge of theoretical concepts, attitude towards compliance and the perception of its influence in the bank's performance - across the different groups that can be formed within the bank's working force i.e. does someone that has been with the bank for 20 years have a higher probability of knowing more about compliance or having a different (more active) attitude towards compliance than someone that has recently joined the institution? Or is someone that has a higher hierarchical position more prone to being sensible to this subject than someone at the bottom of the organizational pyramid?

These and other organizational variables will be analyzed during the course of our study, as well as descriptive information that we will use in order to build on our recommendations and conclusions about the current scenario at the banking institution that received us.

⁴ Mellers, B. A. and A. P. McGraw. 2001. "*Anticipated Emotions as Guides to Choice.*" *Current Directions in Psychological Science* 10: 210-214.

Theoretical Framework

The word *compliance* comes from the verb *to comply*, which in its turn comes from the Latin phrase *complere*, meaning to fulfill or to meet specified standards. This term is of common use in many different social and business settings: In mechanics, it is used to describe how much certain materials respond to stimulus; In medical science, it can be used to measure how well a patient is following the prescribed treatment but is also used to describe a muscle's ability to bend; In the corporate world, however, we will mostly discuss regulatory compliance i.e. the act of being in accordance to legal and regulatory guidelines⁵, as well as promoting and incentivizing ethical behavior at all time⁶. So put, compliance translates the choice or need an organization has of respecting the rules or regulations that govern its operations or its industry, both externally and internally. Additionally, the term *compliance* is also associated to the overall attitude assumed towards these responsibilities. A company that understands the importance of spending its time and resources making an effort in order to become compliant is one that embodies this feeling, in the sense that it will sometimes be doing more than the strictly necessary.

Compliance risk

Simply put, it can be said that the compliance department's main responsibility is to manage (and report to the Board) matters, events, regulatory updates, supervisory relations and controversial decisions related to compliance risk. Compliance risk was first formally categorized and acknowledged by the Basel Committee on Banking

⁵ Basel Committee on Banking Supervision. 2005. *Compliance and the compliance function in banks*.

⁶ Weaver, Gary R. and Linda Treviño. 1999. "Compliance and values oriented ethics programs: influences on employees' attitudes and behavior" *Business Ethics Quarterly*, Volume 9, Issue 2, pp 315-335

Supervision in 2005⁷ and also appears in Portuguese regulation⁸ as one of the 10 risk categories challenging businesses today⁹. It's defined as "the probability of negative impacts in earnings or capital that arises from violations or nonconformance with laws, regulations, specific determinations, contracts, implemented practices, ethical standards or codes of conduct or of customer relations."¹⁰. These negative impacts can materialize themselves in many different ways, spanning from financial to business and, of course, legal sanctions. Any institution that disregards or neglects the compliance risk it is subject to, be it directly through the organization's characteristics or indirectly via the industry or sector where it operates, may be subject to fines, civil money penalties (financial sanctions), voiding¹¹ of contracts or loss of business opportunities (business sanctions). Competitive disadvantages may also arise from conditions imposed from judicial decisions, urging changes or adaptations to be made with accrued pressure and less strategic preparation or planning. In a sense, compliance risk is rather unique as, unlike market risk or interest rate risk (that depend almost exclusively on factors external to the company and that it cannot control), its effects on corporations will depend almost exclusively on the company itself – i.e., how fast the company is at detecting new standards and how culturally devoted it is in making everything in its power to respect existing regulation. Additional criteria for successful compliance risk mitigation could be how well legislation is interpreted – as poor interpretation alone may lead to negative consequences¹².

To fully convey the practical meaning of this risk, let us imagine a man driving a

⁷ Basel Committee on Banking Supervision. 2005. *Compliance and the compliance function in banks*.

⁸ Banco de Portugal. 2008. Aviso nº5/2008

⁹ See Appendix 1 for full list

¹⁰ Basel Committee on Banking Supervision. 2005. *Compliance and the compliance function in banks*

¹¹ Loss of legal validity or binding power due to possible breaches in contractual duties

¹² See Smiley v. Citybank for a case of regulatory interpretation related to the banking industry

car on a national highway, like the one connecting Lisbon and the Algarve, the A2. As in almost every human activity, we have risk – operational risk. There is a risk that the man has an accident and could eventually be injured. He knows that the maximum speed allowed by law is 120 km/hour and he also knows that, if he respects that limit, the traffic brigade cannot sanction him. If the man chooses to drive at a constant speed of 150 km/hour in order to take less time, however, he knows that not only will his operational risk increase, but we will also be breaking the law. The risk the man incurs while driving at 150 km/hour on a highway of being caught by the police and paying a fine is the man's *compliance risk*. The amount of the fine and the man's personality will establish whether he will accept that risk or not – he may think it is endurable and possibly worth it, according to its risk appetite. Maybe that was what happened with many investment-banking corporations in the business world in recent years.

Reputational risk

Another consequence that looms over companies with compliance difficulties is reputational issues, which are strongly associated with compliance risk. More than financial and business sanctions, a negative impact on a firm's reputation can potentially create the most enduring, crippling and costly of hindrances that a company can face¹³. The automobile industry has given us the latest and most forceful examples, with the recall of thousands of cars due to technical or mechanical failures^{14,15} causing more than significant losses, not just due to operational costs but also due to the business lost in periods to come, as consumers and business partners alike perceive that

¹³Perry, Jason and De Fontnouvelle, Patrick. 2005. "*Measuring Reputational Risk: The Market Reaction to Operational Loss Announcements*"

¹⁴ Ohnsman, Alan and Makiko Kitamura. 2010. "*Is Toyota's Reputation Finished?*", Business Week. http://www.businessweek.com/lifestyle/content/jan2010/bw20100128_413922.htm

¹⁵ Clifford Krauss. 2010. "*Oil Spill's Blow to BP's Image May Eclipse Costs*", The New York Times. <http://www.nytimes.com/2010/04/30/business/30bp.html?pagewanted=all>

specific brand as unsafe or unreliable. Naturally, media hype around these events is usually not unrelated to this loss of trust but the consequences are, all the same, extremely negative.

In the financial sector, this too has come to be a very sensitive issue, as is the sensitivity of the decision of which bank to leave your money with. Individual clients and corporations are increasingly willing to spare no efforts in making sure that their money is safe and a bank's reputation is crucial in this decision¹⁶. Switching costs, apparently, pose no obstacle¹⁷. Unfortunately, good reputation is something that many banks and financial institutions in general have been struggling to keep¹⁸, even when they have had little to do with or fought to avoid the kind of credit policies that led the financial industry to the dead end situation in which it is right now.

Historical Background

Compliance first began to reach some notoriety at the turn of the 20th century, when the first public safety agencies started to appear in the USA, as there were increasing concerns on the capability (or willingness) of private agents to provide a product or service that would unselfishly serve the community as a whole, while still making a profit for themselves and remaining sustainable. This was true for such diverse industries as the food industry (quality of the products sold to consumers) and the financial industry (honesty or interests of the person providing the service). The creation of industry-specific enforcement agencies (e.g. pharmaceutical and environmental, for instance) looked to build on this compliance momentum.

¹⁶ Helm S.. 2007. "The role of Corporate Reputation in Determining Investor Satisfaction and Loyalty" *Corporate Reputation Review*, Vol.10 #1

¹⁷ J.D. Power & Associates. 2011. "Shopping and Switching Rates Increase among Retail Bank Customers as Competition in the Industry Intensifies", *U.S. Retail Bank New Account Study*

¹⁸ American Banker. 2010. "Bank Reputation Rankings Flash Red".
http://www.americanbanker.com/issues/175_93/reading-reputation-scorecard-1019174-1.html?zkPrintable=1&nopagination=1

However, it was the 1977 Foreign Corrupt Practices Law, which was signed after a Securities and Exchange Commission (SEC) investigation that exposed the acts of a considerable number of US companies in bribing foreign officials in exchange for contract deals or a bidding upper hand^{19,20}, that opened the floodgates on *corporate* compliance mechanisms. This event, along with the Watergate scandal, was greatly responsible for a new “private side” of compliance – private agents taking over responsibility for compliance and oversight by public agencies taking a secondary role. Companies started to realize that there was something to gain from allocating some of their resources to monitoring and controlling their adherence to laws and regulations, as these resources were substantially less impactful than the possible consequences of a civil action by any regulatory authority.

It was the US Sentencing Commission that wrote the first formal compliance and ethics program guidelines, as a response to an increase in corporate scandals and the lack of coherence in corporate sentencing, when it created the first Federal Sentencing Guidelines for Organizations (FSGO) in November 1991. Companies following these recommendations were considered for lighter sentences and controls were implemented to impose multiple obstacles on criminal behavior.

Despite all these efforts, and as a result of a considerable number of accounting scandals in the beginning of the 20th century that included Xerox, Enron, WorldCom, Merrill Lynch and other large corporations, a major overhaul of regulatory requirements was enacted through the 2002 Sarbanes-Oxley Act (SOX), which revamped issues as diversified as auditor independence, corporate governance, internal control assessment

¹⁹ Time Magazine. 1975. “*Lockeed’s defiance: a Right to Bribe?*”.
<http://www.time.com/time/magazine/article/0,9171,917751,00.html>

²⁰ Frantz D. 1998. “*Chiquita Still Under Cloud After Newspaper’s Retreat*”. The New York Times.
<http://www.nytimes.com/1998/07/17/us/chiquita-still-under-cloud-after-newspaper-s-retreat.html?pagewanted=all&src=pm>

and better financial disclosure²¹. This Act also created the Public Company Accounting Oversight Board (PCAOB), responsible for overseeing, regulating, inspecting and disciplining audit firms and their action in detecting fraud and other illegal practices. “SOX-type laws“ have been enacted in a number of other countries such as India, Australia, Germany and France²².

Just a few years later, however, the gap between risk-taking regulation on investment banking and depository banking had grown considerably, which allowed investment banks such as Lehman Brothers to irresponsibly build on subprime loans, but especially mortgages, as a way to leverage its investment business. That made them extremely vulnerable to even small volatilities in the housing market. The subprime mortgage crisis, which saw a rise in foreclosures and defaults, brought on more than just a small volatility and exposed these institutions to the consequences of their doubtful lending decisions.

The financial crisis that ensued Lehman Brothers’ bankruptcy in September 2008 posed yet another challenge for the financial industry and its supervisors, as both these agents tried to regain trust from the markets²³– the first, for irresponsible actions and the latter, for its inability to prevent them. “Back to the drawing board”, they might say, as financial regulation reforms took place and paradigms behind the action of financial services were, once again, reformulated and improved.

²¹ Securities and Exchange Commission. 2012. “The Laws that Govern the Securities Industry” <https://www.sec.gov/about/laws.shtml>

²² The GRC Group. 2012. “Shining the light on the Sarbanes-Oxley Act: Widespread Resonance and global echoes”. <http://www.grcg.com/what-is-sox/> (accessed May 20th, 2012)

²³ Anand, Kartik., Prasanna Gai and Matteo Marsili. 2011. “Financial crises and the evaporation of trust”

Compliance culture

With such an instable regulatory backdrop to work with over the last few decades, banks may have acquired the tendency to look at guidelines and regulation as a competitive disadvantage^{24,25}, but they are now trying to integrate it in its corporate strategy²⁶. Simultaneously, this subject is being taken out of a “back-office” perspective and manipulated in order to have a positive and strong contribution on banks’ reputations. A bank’s objective should be to make compliance to rules, guidelines and ethical standards not just a simple whim but, on the contrary, a strategically planned and laid out set of actions that will ultimately lead to competitive advantages, by having the Compliance department serve as a protection against sanctions, fines, operating inefficiencies and reputational damages that other banks may have yet to detect. This should be an end in itself, transversal to the entire organization and leaving out no worker, independent of their job or position. That is why the question remains: will CECOs around the world be required to single-handedly make the organizations they work for an example of outstanding ethical conduct and irreprehensible rule abiding, while at the same time trying not to pull an oversized deal of resources towards this activity, so as to allow its organization to earn profits and remain competitive? The answer is simple, and should be one of no hesitation for anyone with any kind of responsibility for governance in the business world: “It’s the people, stupid.”²⁷ As we had mentioned earlier, the concept of compliance culture is crucial. This is not a

²⁴ Glenn Alan Cheney. 2006. “Regulation: a help or hindrance to business growth?”, *The Free Library*. <http://www.thefreelibrary.com/Regulation%3A+a+help+or+hindrance+to+business+growth%3F-a0151653027> (accessed March, 13th, 2012)

²⁵ McCreevy, Charlie. 2007. “Regulators: help or hindrance?”. Speech given at the 12th Annual International Corporate Governance Network in Cape Town, South Africa.

²⁶ Rothenberg, Stephen E., Michael N. Abrams and Rita Numerof. 2010. “*The need for Compliance as a Business Strategy*”. Medical Device and Diagnostic Industry. <http://www.mddionline.com/article/need-compliance-business-strategy> (accessed April 3rd, 2012)

²⁷ Slight variation of James Carville’s presidential campaign sentence “The economy, stupid”

fugacious requirement by regulatory authorities rather than it is a long-standing distinction many supervisors impose between companies that successfully instill this culture in their organization, and the ones that don't. This concept has existed and been enforced since the creation of the FSGO, where on top of lighter sentences for compliant companies, the distinction was also made between companies that implemented procedures and routines to detect criminal behavior and those that, in addition, promoted a corporate culture that encouraged compliance to rules and regulation and an ethical conduct at all times.

It is, as many other culture-related concepts, difficult to define, and the phrase “you’ll know it when you see it” comes to mind. However, it would be impossible for companies to try to implement something that could not be clearly defined or explained. Therefore, the Securities and Exchange Commission provided what we feel is the best definition for this culture: “(...) establishing, from the top of the organization down, an overall environment that fosters ethical behavior and decision-making. Simply put, it means instilling in *every employee* an obligation to *do what's right*. This culture will underpin all that the firm does, and must be part of the essential ethos of the firm, so that when employees make decisions, large and small, and *regardless of who's in the room when they make them*, and whether or not lawyers or regulators or clients or anyone else is looking, they are guided by a culture that reinforces doing what's right. Importantly, a firm's Culture of Compliance exists outside the compliance department — it exists *throughout the firm*”²⁸. For such a culture to develop, we feel it is crucial for the workers to be reasonably acquainted with the theoretical concepts of this area as well as having interiorized the values underlying this positioning and feel actively about

²⁸ Richards, L. 2007. “*Working towards a culture of compliance: some obstacles in the path*”. Speech given by SEC staff at the National Society of Compliance Professionals 2007 National Membership Meeting in Washington, D.C., U.S.A.

them. They should also possess a realistic grasp on what the compliance department really does for the bank i.e. the impact compliance activities have on its results and overall performance.

Notwithstanding this need, it is also true that many workers may have different viewpoints, which can derive from a number of different factors such as academic background, professional experience or even the position they hold inside the bank's structure.

One example for this are lawyers (or other workers with a legal background), whose appetite for this kind of compliance positions has been questioned repeatedly by many industry professionals and compliance experts²⁹ (despite the growing number of companies resorting to their legal professionals to carry out this function). They base their case in the fact that a lawyer's positioning as a CECO will more than often fall into simple questions like "*are we compliant?*" in order to convey that message onto senior management rather than business-driven questions such as "*how* do we become compliant?", "*in what part of business* is our compliance most pressing?" or "*what are the consequences* of not being compliant?". Another example may be the duration of the professional relationship between the worker and the company. On average, we will expect to see more unethical or incorrect behavior from someone that is yet to integrate the company's values or positioning and made them his own. Loyalty is key in this process, and it may take several years to develop. Other examples can come from hierarchical position, seeing as a team leader or department coordinator may feel he has a greater responsibility or duty to be ethically correct (even if only for the higher

²⁹ Tabuena, J. 2009. "*Fitting a square peg in a round hole*". Corporate Secretary

notoriety) than someone who feels their actions go undetected or are given little importance to.

We thus begin to understand that it will be truly relevant for us to analyze these different groups separately, as well as the different dimensions of the concept of compliance culture.

Methodology

In order to meet our goals and to properly assess what was being said and thought about compliance at the bank, we chose to apply a survey to the bank's employees working at its main headquarters. Due to the bank's organizational characteristics, we restricted our sample size to 50 employees, from which we obtained 32 answers (64% answer rate). Additionally, the sample was built in such a way that it would allow for sufficient diversity of positions and departments, so as to gather some representativeness (which makes it an objective sample)³⁰.

We first submitted a formal request to the bank's Board in order to obtain permission. The questionnaire itself was an Excel file, which was securely locked to prevent editing and other kinds of misuse. It was composed of 20 questions, 5 of them being information regarding the employees' situation at the bank (no information on the department was asked, so as to guarantee anonymity to survey respondents), namely:

- *Position* (which was assumed to be an ordinal variable, seeing as there is an hierarchical rank between them, as listed): administrative assistant, junior manager, unit coordinator, area coordinator, department coordinator or central director,
- *Business area*: core, support or operational,

³⁰ Maroco, J. and Regina Bispo. 2005. "Estatística aplicada às ciências sociais e humanas." 2nd ed. pp 83-84. Lisboa: Climepsi Editores

- *Education*: high school or college degree,
- *Education field*: high school, management/economics or other areas and
- *Number of years of work at the bank*.

These variables were treated as our independent variables. The remaining 15 questions looked to assess the worker's level of compliance culture and its 3 sub-categories:

- *Total compliance score*: the average of all 12 rated questions,
- *Knowledge of compliance concepts* – 3 questions (“What can happen to the bank in case of non-compliance with rules and regulations?”),
- *Attitude towards compliance and its action* – 5 questions (“In the last 3 months, have you witnessed any compliance incidence?”) and
- *Perception of the influence compliance has on the bank* – 4 questions (“Compliance plays an important role in the bank's results and performance. Do you agree?”).

The score on each of these 3 variables, as well as the total score, constituted our dependent variables. We used the average answer to compute total scores i.e., instead of summing all the answers given by the respondents on a scale from 1 to 5, we calculated the average answer. The same procedure was adopted for calculating the score in the 3 variables. As mentioned before, only 12 questions had a quantitative scale ranging from 1 to 5. The remaining 3 questions were used to gather descriptive information that helped us build on our recommendations and directed us towards some conclusions, seeing as they would be challenging to classify and still obtain comparable results (due to greater subjectivity and more space to write e.g. “Define Compliance shortly”). On

occasion, the scale was inverted, meaning that a score of 5 could possibly be the worst score e.g. “Rules and procedures at the bank are a formality and, in reality, things happen differently. Do you agree?”³¹ If a worker were to agree completely, this would pose serious impairments to his compliance culture, and this score would have to be corrected in order to reflect its true meaning, which we did.

Our hypothesis for each independent variable is:

- **H₀:** $\mu_1 = \mu_2 = \dots = \mu_n$, the mean total survey score is the same across the different groups
- **H₁:** $\mu_1 \neq \mu_2 \neq \dots \neq \mu_n$, there are at least 2 mean total survey scores which differ across groups,

where n stands for the number of different groups within each independent variable.

The statistical treatment of the data was made in SPSS for Mac (version 20.0.0) and statistical tests were applied to verify our hypothesis. We tested each dependent variable for normality over each of the independent variables (position, years at the bank, education level, education area and business area) and their categories with the Shapiro-Wilk normality test (which is adequate for samples < 50 ³²). For our hypothesis, we used an ANOVA test for k independent samples (parametric) or Kruskal-Wallis test (non-parametric). For the level of school attendance, and seeing as we had only 2 different levels (high school or college education), we used the Student's t-test for 2 independent samples (parametric) or the Mann-Whitney test (non-parametric).

We also conducted correlation analysis in the variables we detected as having

³¹ The Economist. 2008. “*Governance, risk and compliance in financial services*”. Economist Intelligence Unit

³² Maroco, J. and Regina Bispo. 2005. “*Estatística aplicada às ciências sociais e humanas*”. 2nd ed. Lisboa: Climepsi Editores

some type of relationship in this first stage, for which we utilized the Spearman's rank correlation coefficient. Finally, in order to obtain a broader picture, we tried to include all of our independent variables in an explanatory multiple regression model that would help us best predict the expected level of compliance culture of a given worker according to his or her characteristics.

Results

As we can see, our sample gathered reasonable representativeness, except possibly for the cases of department coordinators ($n = 2$), other college graduates ($n = 5$) and workers from the operational area ($n = 4$).

Table 1 below represents the constitution of our sample, in all its 5 dimensions (independent variables):

Table 1: Sample composition ($n = 32$)

Variable	Sub-category	Frequency (n)	Proportion
Position	Administrative Assistant	7	21,9%
	Junior Manager	11	34,4%
	Unit Coordinator	5	15,6%
	Area Coordinator	7	21,9%
	Department Coordinator	2	6,3%
Area	Business Area	14	43,8%
	Support Area	14	43,8%
	Operational Area	4	12,5%
Education Level	High School	10	31,3%
	College	22	68,8%
Education Area	High School	10	31,3%
	Management/Economics	17	53,1%
	Other college graduations	5	15,6%
Number of years at the bank	Less than 3,5 years	6	18,8%
	Between 3,5 and 7 years	2	6,3%
	Between 7 and 10,5 years	6	18,8%
	Between 10,5 and 14 years	7	21,9%
	Between 14 and 17,5 years	5	15,6%
	Between 17,5 and 21 years	6	18,8%

We obtained an average *total score* in the compliance culture survey of 3.66 points out of 5 ($\sigma = 0.39$). In the remaining 3 sub-scores, we obtained an average score (by descending order) of 3.91 in the *attitude* sub-score ($\sigma = 0.58$), 3.48 in the *compliance concepts* sub-score ($\sigma = 0.49$) and 3.47 in the *perception of compliance's impact* sub-score ($\sigma = 0.42$). The question with the highest average score across the sample was “*Is Compliance training useful for my work?*”, with 4.28 ($\sigma = 0.68$) and the question with the lowest score was “*Does the Bank give too much importance to Compliance?*”, with 2.90 ($\sigma = 0.54$). This last question's score is inverted, which means that, on average, the bank's workers considered that the bank was, in fact, giving too much importance to this department.

Total Survey Score

On the *total survey score* variable, the Shapiro-Wilk normality test presented p-values equal or greater than 0.05 when applied to the categories of *area*, *education level*, *education area* and the *number of years at the bank*, which lets us assume normality. The same did not occur for *position*, as there was one p-value smaller than 0.05 (unit coordinator, $p = 0.045$). In the course of studying the group's different means, we found no significant differences between them in the total survey score for *area* ($F = 1.022$, $p = 0.372$), *position* ($H_{(4)} = 7.676$; $p = 0.10$), *education level* ($t_{(30)} = 0.686$; $p = 0.498$), *education area* ($F_{(2,29)} = 0.24$, $p = 0.788$) or *years at the bank* ($F_{(5,26)} = 0.576$, $p = 0.718$). With *total survey score* not presenting any relevant conclusions, we broke this score down into its 3 categories in order to capture potential effects on different dimensions of compliance we might have been overlooking.

Concepts Sub-Score

In the *concepts* sub-score, the Shapiro-Wilk (SW) test allowed the assumption of normality for *area*, *position* and *number of years at the bank* (p -values greater than 0.05). For *education level* and *education area* (high school, $p = 0.031$), however, that assumption was not possible. We verified significant differences in *position* ($F_{(4,27)} = 4.172, p = 0.009$) but none in *area*, *education level*, *education area* and *number of years at the bank*.

Attitude Sub-Score

In the *attitude* sub-score, the normality test was not significant ($p > 0.05$) across all categories of the independent variables, which allows us to assume normality. Unfortunately, no significant differences were traced within any of our independent variables.

Perception Sub-Score

Finally, in the *perception* sub-score, the SW test proved not significant ($p > 0.05$) both for *area*, *education level* and *number of years at the bank*. It failed to do so for *position* (unit coordinator, $p = .006$; area coordinator, $p = .016$) and *education area* (other fields, $p = 0.006$). However, significant differences were still achieved for *position* ($H_{(4)} = 9.099; p = 0.05$), *education level* ($t_{(30)} = 2.292; p = 0.029$) and *education area*, despite the high p -value ($H_{(2)} = 4.929, p = 0.08$).

Post-hoc tests

For differences traced within *hierarchical position*, and seeing as we had rejected the null hypothesis that all 5 levels would have equal means in the *concepts sub-score*, we applied the Tukey's Honestly Significant Difference (HSD) post-hoc test in order to know which groups differed significantly from which others. These

comparisons indicated that the mean concepts sub-score for the administrative assistant ($\mu = 3.12$; $\sigma = 0.36$) significantly differed from that obtained by area coordinator ($\mu = 3.74$; $\sigma = 0.50$) at a 6% significance level and by department coordinator ($\mu = 4.25$; $\sigma = 0.59$) with a significance of 0.02. Additionally, we concluded that results from unit coordinators ($\mu = 3.27$; $\sigma = 0.45$) were also different from those obtained by department coordinators with a significance of 5%.

Correlation analysis

Following this analysis, from where we were able to understand which variables were possibly interconnected by more than random chance, we applied a correlation analysis, using the Spearman's rank correlation coefficient. We found significant Spearman correlations between *position* and the *concepts* sub-score ($\rho = 0.49$, $p = 0.004$), which reinforced our previous result. *Position* was also significantly correlated with *total survey score* ($\rho = 0.41$, $p = 0.021$), despite mean difference test having provided only a 10% significance level previously. We also found correlations between the *perception* sub-score and *education level* ($\rho = -0.37$, $p = 0.037$), which also followed the significant mean difference detected earlier. *Education area* and *perception* sub-scores were also significantly correlated ($\rho = 0.40$, $p = 0.025$), which we could expect seeing as *education level* and *education area* are 2 variables that are related by definition. Finally, we also detected a correlation between *number of years at the bank* and *total survey score*, but its power was smaller ($\rho = 0.30$, $p = 0.10$).

Multiple Regression analysis

To complete our analysis, and to best capture the multi-sided influence of these variables on a single worker's total level of compliance culture (*total survey score*), we applied the multiple regression technique. **Table 2** depicts the quality of 4 different

models. The first model contains only 2 variables, *education level* and *position*. The remaining 3 models add more independent variables but with no significant increase in the predictive power of the model ($F_{(2,29)} = 1.26, p = 0.27$).

Table 2: Regression Models and their contribution in terms of R^2

Model Summary					
Model	R	R Square	Change Statistics		
			R Square Change	F Change	Sig. F Change
1	,463 ^a	,215	,215	3,965	,030
2	,498 ^b	,248	,034	1,257	,272
3	,504 ^c	,254	,006	,205	,654
4	,529 ^d	,280	,026	,941	,341

Table 2 shows us that the remaining variables we have studied with this survey (*business area, education area and number of years at the bank*) do little to explain the level of compliance culture, i.e., the total survey score for each employee. The other 2 variables (*position* and *education level*), however, reveal fairly accurate predictions with a beta of 0.48 ($p = 0.011$) and -0.30 ($p = 0.10$), respectively.

That predictive power is maintained for the *concepts* variable, where the beta for *position* is 0.63 ($p < 0.01$) and -0.31 ($p = 0.066$) for *education level*.

In both cases, and seeing that the remaining dependent variables have failed to produce relevant results, it would seem that regressions with 2 variables (*position* and *education level*) are the ones most suited to predict survey scores. All in all, the most influential variable is *position*, as is shown in **Appendix 5**, which contains a table that depicts the summary of the different models used and the influence each variable has on the total survey score, as measured through its *beta*. The variable *position* did not have a beta inferior to 0.42 in any model tested and was always significant at the 5% level.

Discussion

It was thanks to many unprecedented events in the business and financial world that compliance, and ethics in general, began receiving more than its 15 minutes of fame. As the number of corporate scandals increased³³, public opinion rallied around what common sense tells us to be the most basic in a society: its values. Our objective was to analyze whether the “compliance *set of mind*” had really permeated the organization where we carried out our internship, being part of the banking industry as it is.

Based on our sample, we consider the compliance culture at this bank as being at moderate levels. 3.66 points out of 5 correspond to a 14.6 grade out of 20. However, we ask ourselves, is that enough? In times where *doing the right thing*³⁴ is again becoming the norm in the business world, and where values such as social responsibility and sustainability are conquering bigger slices of corporate budgets³⁵, shouldn't it be your people the first thing to change? A considerable amount of respondents (n = 16; 50%) attributed the compliance department the responsibility (or duty) of creating internal norms or regulations. This notion is fairly off target and leads us to associate it to little contact with this reality. At a compliance department, the mission of interpreting external laws, regulations, best practices and ethical standards and to adjust internal norms and procedures to best fit them must never be mistaken for the creation of said internal regulations. That is the function of a truly operational area, where many other

³³ Ted Barrett. 2002. CNN Politics. http://articles.cnn.com/2002-07-24/politics/corporate.reform_1_corporate-scandals-house-republicans-corporate-wrongdoers?_s=PM:ALLPOLITICS (accessed March, 20th, 2012)

³⁴ John Mariotti. 2011. “*The struggle of doing the right thing*”. American Express Open Forum. <http://www.openforum.com/articles/the-struggle-of-doing-the-right-thing> (accessed May 15th, 2012)

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variables and contributions must also be taken into account until the final output is generated.

But where is this notion coming from? Is it sprouting from convictions held by junior positions or is this in fact a problem of communication between hierarchies, where top managers understand the compliance scenario and its minutiae but are simply unable to communicate it onto their subordinates?

Our statistical analysis seems to point us towards this last hypothesis, seeing as our results presented a positive relationship between the variable *position* and the variable *total survey* score as well as the variable *concepts*. This is true as much correlation-wise as it is regression-wise, as we have previously seen in the results section. On the one hand, there exist positive aspects related to these results, such as the fact that the people with the most responsibilities but also with the most power, denoting a bigger sensibility towards these issues, which lets us believe that they will look to upkeep this way of thinking throughout their organization with a bigger degree of probability than your average worker. On the other hand, every correlation is 2-sided, which in this case means that positions ranked lower in the organization will suffer from significant shortcomings when dealing with these issues. This goes against some of the fundamental *same language* principles, enacted by some risk experts³⁶ and that call for a *common risk infrastructure*, with no missing links between senior management and the rest of the organization. “*What you don’t know won’t hurt you*” does not apply to corporate compliance³⁷, where the simple act of ignoring can bring severe consequences to your organization.

³⁶ Mendes, Pedro M. 2011. “*The Audit Role & Risk Management*” Deloitte, lecture given at Nova School of Business and Economic, Lisbon, Portugal

³⁷ Peiser, Joseph C. 2012 “*Ignorance is not Bliss: Using D&O Insurance Applications to get to Corporate Compliance*”. <http://www.corporatecomplianceinsights.com/ignorance-is-not-bliss-using-do-insurance->

It was also fairly immediate for us to see that nearly all 32 respondents placed some kind of reason why they didn't develop a higher interest for the compliance department and its activities, while only 1 respondent posed no obstacle whatsoever to his interest. A vast majority of those claimed the little time they had available as the number one reason while others claimed the subject itself had little internal publicity. To many of these workers, according to these results, compliance would appear to present itself as an option: *"If I were to invest more time in this activity, I would be able to achieve full compliance. However, as the number of tasks I am responsible for is excessive, I am not able to achieve task completion and task compliance requirements at the same time."* We all know how fast-paced and demanding the business and the financial world can be. We also know that managers today are being ever more pressured to become versatile, adaptive and assume an array of different functions³⁸ that allows them to contribute in many different ways to a project or organization. Nonetheless, we have learned during the course of our internship that compliance and its influence on every activity, task and decision, is not an option. That is, it should be opted *for*, but it really should be regarded as something that must underlie all that we do and something that must come within our thought process: *"It is unimaginable for me not to consider compliance aspects in the midst of my daily activities"*. From our research, we obtained results from people from areas such as accountancy and IT (which are 2 of the most compliance-sensible departments) clearly stating little time available as one of the reasons for their small interest but also summing causes like little importance to the bank or the fact that their job description did not require them to

[applications-to-get-to-corporate-compliance/](#) (accessed May, 14th, 2012)

³⁸ Testa, Bridget. 2010. *"Multiskilled employees sought as versatility becomes a workplace virtue"*. Workforce

worry themselves about it. This is related to what was discussed earlier – compliance is every worker’s responsibility, independent of his or her job or area, and this is why culture is such an important part in creating this environment, seeing as a considerable amount of voluntary mind-changing is always necessary.

In what concerns other variables, such as school education, we were also surprised by the findings, as were expecting for education to positively influence the results on our survey. However, this variable presented significant negative correlations ($\rho = - 0.37, p = 0.037$), to the variable *perceptions* i.e. the average result from workers with college education was significantly lower than that of workers with only high school education.

We were also surprised to see no relevant conclusion being made from the relationship between our survey and the variable *number of years at the bank*. Relationships have been found between organizational loyalty and ethical behavior REF, which led us to believe, based on the assumption that a worker who has been with the organization for many years has acquired a significant amount of loyalty towards it, that this variable could influence its score on our survey and their overall posture towards this department and its importance. In failing to do so, we present a possible explanation, that bases itself in the possibility of this loyalty-building process having been interrupted because of its acquisition by a foreign bank in the last decade. Having changed image and strategy completely, many may have felt like they were working for an entirely different bank. The fact that it was foreign may have also contributed to some loss of loyalty.

Our objective in this Work Project was not only to discuss a topic that will become increasingly important in the future but also to discuss how it is going to

change, in light of almost continuous regulatory reforms and the growing impact non-national regulation will have on organizations, especially those from the financial industry. The most pressing challenges for compliance officers in the near future will be essentially American pieces of regulation, some with a truly global reach, leaving no small or medium sized company or individual indifferent. The soon-to-be-enforced Foreign Account Tax Compliance Act (FATCA) posed serious logistical, legal and operational issues and challenges for banking institutions worldwide, and efforts are still being made in order to have government cooperation on this matter. Without it, many banks, independent of country or size (provided they have *US Person*³⁹ clients) will have to give up those clients so as to escape income withholding taxes of 30%. The Dodd-Frank Wall Street Reform and Consumer Protection Act also brought on stricter registration requirements with the Securities and Exchange Commission (previously there were some exemptions) and brought under that same regulatory body's supervisory a number of non-bank financial institutions, that are regarded as if they were a bank.

Solution and challenge alike, many call for bigger Governance, Risk and Compliance (GRC) integration within national and multinational corporations. Recent studies⁴⁰ have made a strong case for it, with many industry experts and professionals providing insight into the substantial decrease in compliance risk they are subject too when the move is made towards this integrated approach. The main advantage will be to prevent organizations from having independent yet overlapping control functions that, in extreme situations, may bring redundant reporting to senior management, which

³⁹ Citizens, residents in the United States, as well as a domestic partnership or corporation – IRS.gov: <http://www.irs.gov/businesses/small/international/article/0,,id=96395,00.html> (accessed June 1st, 2012)

⁴⁰ The Economist. 2008. “*Governance, risk and compliance in financial services*”. Economist Intelligence Unit

impedes a comprehensive view of the risk affecting the company and creates silos that can easily become a risk in itself. With such pressing and overwhelming regulatory reform processes as the ones we are witnessing globally everyday, this kind of redundancy might be enough for devastating consequences.

Limitations

In spite of the most favorable conditions we were given during the course of our internship and to conduct our survey research, we feel obliged to say that there were some limitations on the study we conducted. These limitations, had they not existed, might have brought on significantly more reliable results as well as better information for the institution.

The most hindering limitation was the modest sample size ($n = 32$) we were able to collect. This was due to logistical requirements imposed by the organization as well as a reduced time frame to answer the survey (approximately 2 weeks). The statistical implications of a small sample, itself divided in several groups, makes it harder to immediately assume this sample's representativeness.

Another limitation was the lack of existing literature on this subject, specifically one where this topic was approached in a quantitative way, as we have tried to do here. This limitation makes our judgment of the results obtained subjective and lacking in empirical demonstration. To fight this, we tried to benchmark our results always based on how a compliance system *should* work, rather than evaluate it strictly for its numbers.

Recommendations

During the completion of this Project, and based on the reflection we made on this subject, we were able to detect some aspects we feel could be improved in the

Compliance department of this organization, in spite of the considerable experience of its workers.

First, we believe the bank, as a whole, should look to move with the recent developments in the sector and integrate its different risk-managing departments. At the very least, it should look to provide these departments with the tools necessary for better and more efficient communication and sharing of information between them. We are aware of the obstacles that such an operation poses, if not for logistical and operational reasons, for politics alone. The rearranging of hierarchical positions or even its disappearance is always something to be considered thoroughly and, at first, the existence of a return on these movements and this integration may not even be perceived as relevant. However, we believe that, over time, and with the necessary support from senior management, the more transparent and efficient reporting, as well as the improved coordination of the different control functions will play a considerable role in mitigating risk, in all its different categories and dimensions, for the bank.

Additionally, we feel that the importance of compliance and its inherent mentality should deserve more publicity in order to reach all the organization's levels more efficiently. It is important to convey the message that the organization's top management is committed to this type of behavior and conduct (the *tone at the top*), notwithstanding the increasing importance of the tone established by mid-level managers, as we have stated earlier. It was following this *rationale* that the department, with our collaboration, implemented a bi-monthly *Compliance Newsletter*, where the most recent regulatory developments and updates were discussed and given awareness. However, during our time at the institution, we felt that something more was needed and we thought of increasing the internal "marketing" efforts, be it through

communication spaces usually reserved to HR (in elevators and in several different locations within the bank) or possibly resort to more paper-based communication (such as flyers) to avoid the possibility of being ignored by the bank's workers. The simple fact that the Board approves such measures will bring the topic to their attention but also emphasize the management's commitment to it.

We highly recommend the bank to maintain their bet on Compliance training, allowing workers to maintain themselves informed on the concepts and problems of this department, as well as possibly acquire a greater interest for it. We do recommend, however, that these training sessions carry higher practical implications for the workers, allowing them to expose past working experiences where they have had problems and did not know how to react, or simulate and enact situations that make the comprehension much easier and faster.

Finally, we also recommend the bank to positively stimulate the workers who wish to report suspect or controversial situations, from a Compliance point of view. Not only will they be motivated towards that goal, but they will also have an opportunity to apply any knowledge they might have acquired.

Conclusions

Compliance, and its growing importance as a factor for the sustainability and reputational dimensions of a bank, has gained some notoriety. That notoriety has led us to write this paper, which intended to dissert over some of the most important aspects of this subject, as well as seize the opportunity of practical experience (our internship) to include several practical and professional world insights, which we hoped would contribute to the understanding of Compliance by those not related to the industry. We also proposed testing the level of Compliance culture of the bank's employees through a

self-elaborated survey (multiple-choice questionnaire) that lacked benchmarking (due to little quantitative information on this matter) but allowed us to perceive the general positioning of the organization's workforce towards it.

We found out that, while the overall results were not at all unpleasing, there were still a lot of misconceptions in the employee's view of Compliance, as well as its role and functions. We also recognized that hierarchical position proved to be a strong variable in predicting the general positioning towards Compliance and that maybe that constituted a symptom for a bigger disease: the lack of conveyance by top and mid-level managers of the importance of this positioning.

However, we feel there is still a lot of awareness to be raised towards Compliance, as many still regard it, even within the banking industry, as "*lawyer's work*". The strategic and ethical principles behind Compliance are, most probably, what separate it from any legal profession and what makes it so important in fighting some greed-driven and value-absent policies that caused substantial turmoil to the financial industry in recent years.

We hope to have contributed to this discussion and to have put in place study structures that can be developed on in the future.

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Appendixes

Appendix 1: 10 risk categories facing businesses today.

a) *Risco de crédito:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, devido à incapacidade de uma contraparte cumprir os seus compromissos financeiros perante a instituição, incluindo possíveis restrições à transferência de pagamentos do exterior;

b) *Risco de mercado:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, devido a movimentos desfavoráveis no preço de mercado dos instrumentos da carteira de negociação, provocados, nomeadamente, por flutuações em taxas de juro, taxas de câmbio, cotações de acções ou preços de mercadorias;

c) *Risco de taxa de juro:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, devido a movimentos adversos nas taxas de juro de elementos da carteira bancária, por via de desfazamentos de maturidades ou de prazos de refixação das taxas de juro, da ausência de correlação perfeita entre as taxas recebidas e pagas nos diferentes instrumentos, ou da existência de opções embutidas em instrumentos financeiros do balanço ou elementos extrapatrimoniais;

d) *Risco de taxa de câmbio:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, devido a movimentos adversos nas taxas de câmbio de elementos da carteira bancária, provocados por alterações nas taxas de câmbio utilizadas na conversão para a moeda funcional ou pela alteração da posição competitiva da instituição devido a variações significativas das taxas de câmbio;

e) *Risco de liquidez:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, decorrentes da incapacidade da instituição dispor de fundos líquidos para cumprir as suas obrigações financeiras, à medida que as mesmas se vencem;

f) *Risco de "compliance":* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, decorrentes de violações ou da não conformidade relativamente a leis, regulamentos, determinações específicas, contratos, regras de conduta e de relacionamento com clientes, práticas instituídas ou princípios éticos, que se materializem em sanções de carácter legal, na limitação das oportunidades de negócio, na redução do potencial de expansão ou na impossibilidade de exigir o cumprimento de obrigações contratuais;

g) *Risco operacional:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, decorrentes de falhas na análise, processamento ou liquidação das operações, de fraudes internas e externas, da utilização de recursos em regime de subcontratação, de processos de decisão internos ineficazes, de recursos humanos insuficientes ou inadequados ou da inoperacionalidade das infraestruturas;

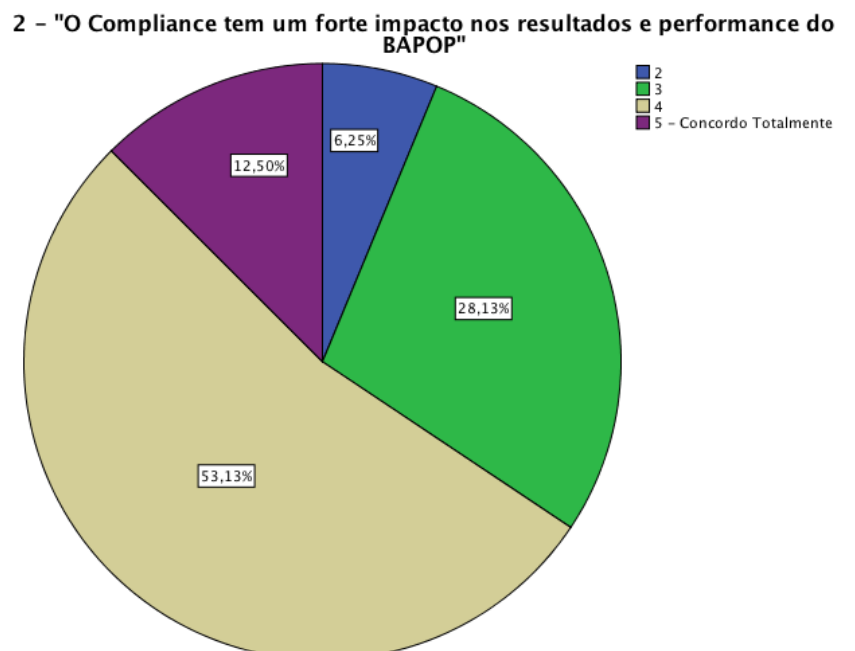
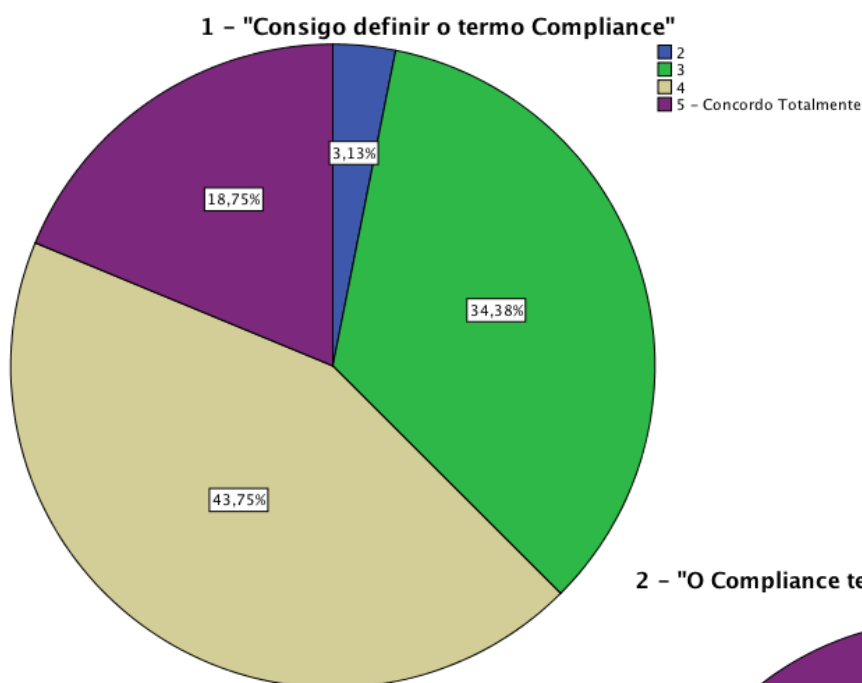
h) *Risco dos sistemas de informação:* a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, em resultado da inadaptabilidade dos sistemas de informação a novas necessidades, da sua incapacidade para impedir acessos não

autorizados, para garantir a integridade dos dados ou para assegurar a continuidade do negócio em casos de falha, bem como devido ao prosseguimento de uma estratégia desajustada nesta área;

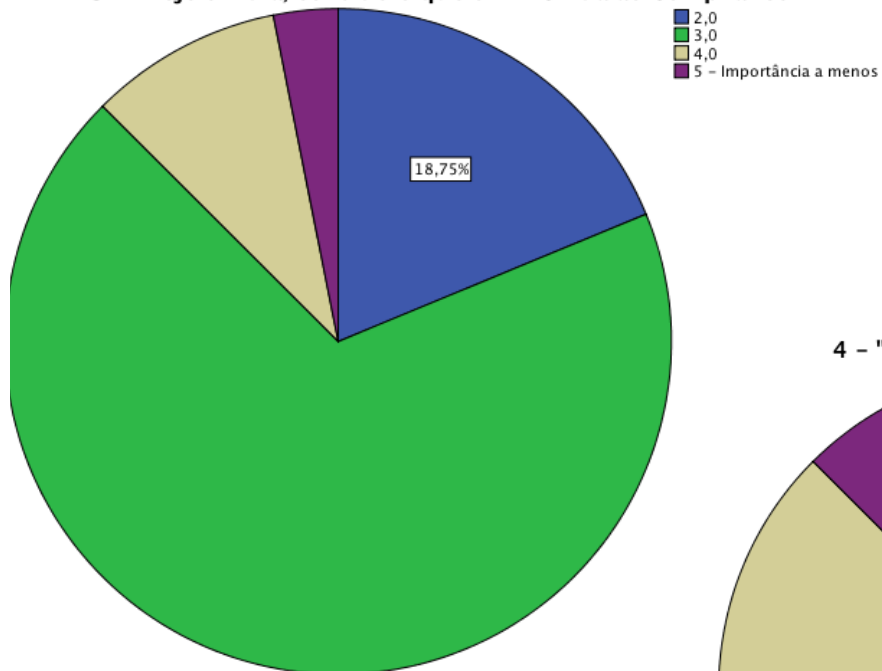
i) Risco de estratégia: a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, decorrentes de decisões estratégicas inadequadas, da deficiente implementação das decisões ou da incapacidade de resposta a alterações do meio envolvente ou a alterações no ambiente de negócios da instituição;

j) Risco de reputação: a probabilidade de ocorrência de impactos negativos nos resultados ou no capital, decorrentes de uma percepção negativa da imagem pública da instituição, fundamentada ou não, por parte de clientes, fornecedores, analistas financeiros, colaboradores, investidores, órgãos de imprensa ou pela opinião pública em geral.

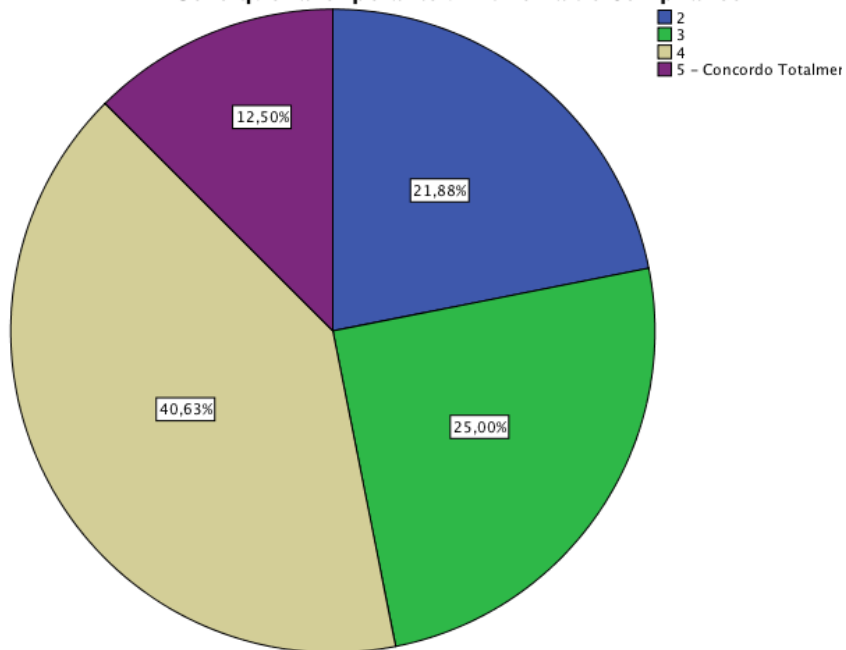
Appendix 2: Survey results



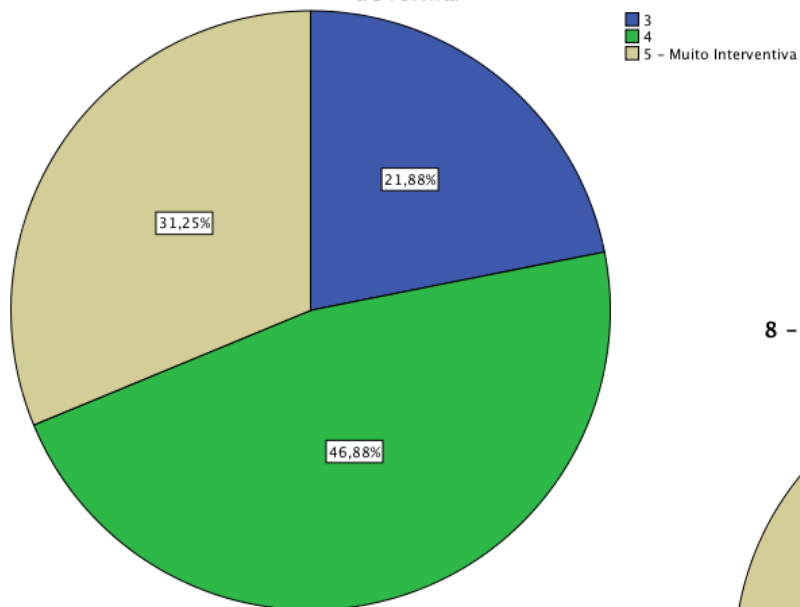
3 – "Hoje em dia, considero que o BAPOP dá ao Compliance:"



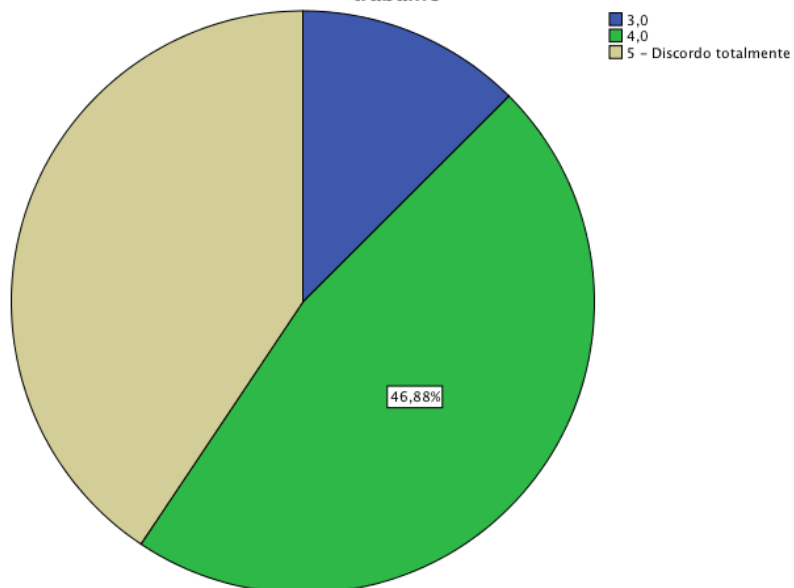
4 – "Sei o que fazer perante um dilema de Compliance"



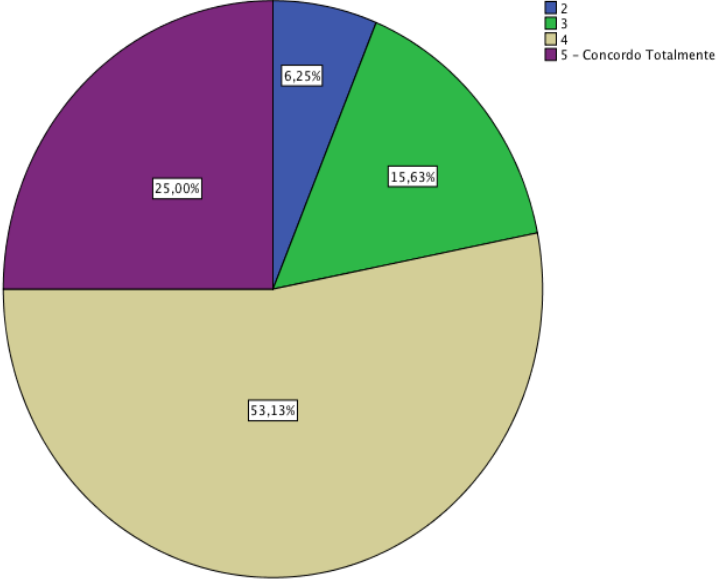
6 – "Confrontado com incidências de Compliance, sinto que deveria reagir de forma:"



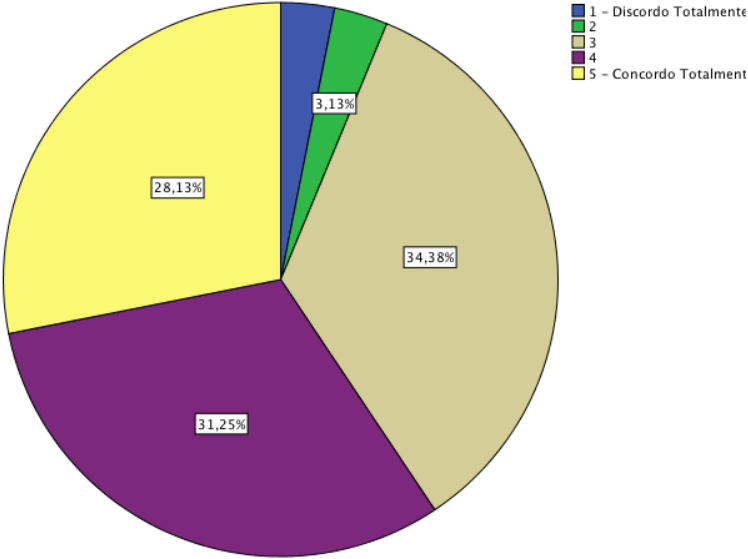
8 – "Sinto que estar em Compliance constitui um obstáculo ao meu trabalho"



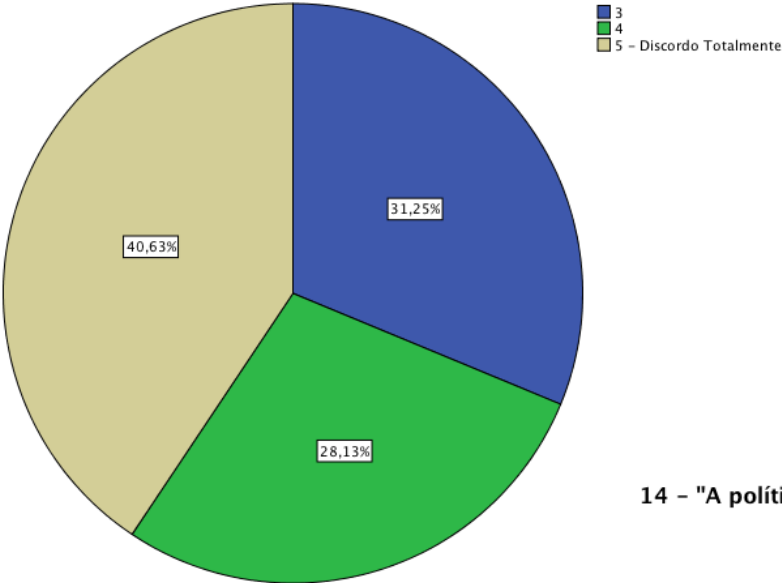
9 – "As formações sobre o compliance são úteis para o meu trabalho"



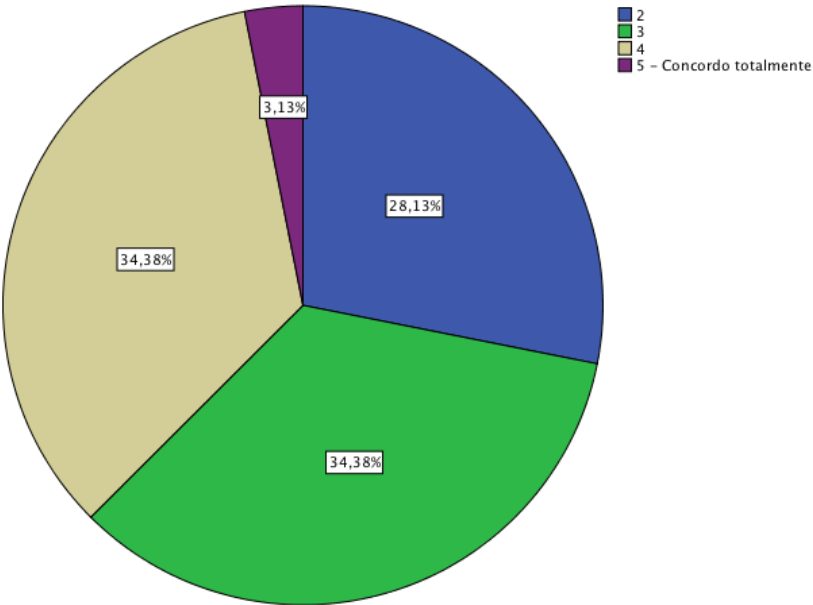
11 – "Estou interessado em formação adicional em assuntos relacionado: com o Compliance"



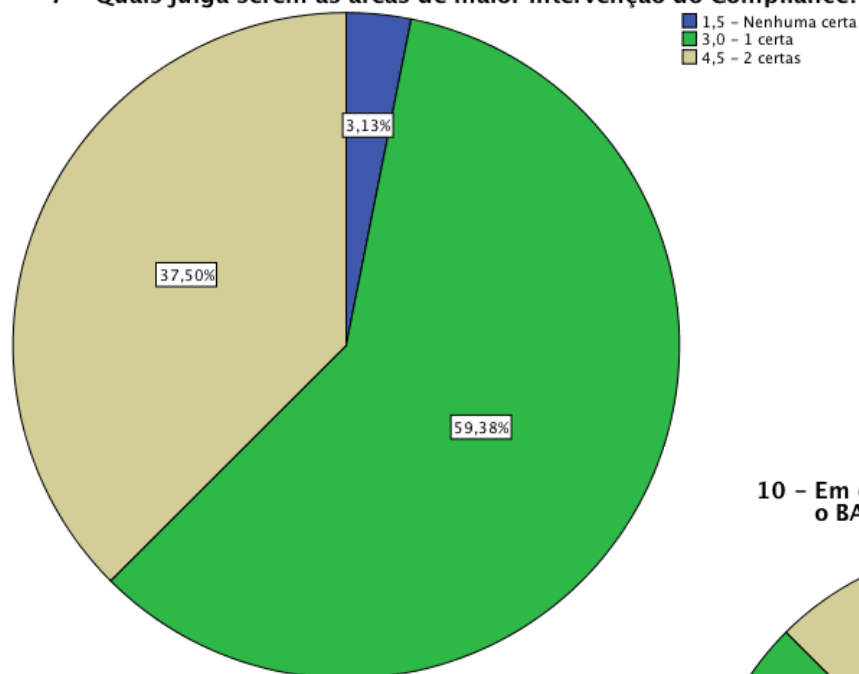
13 – "As normas e procedimentos no BAPOP existem como uma mera formalidade e, na prática, as coisas passam-se de maneira diferente"



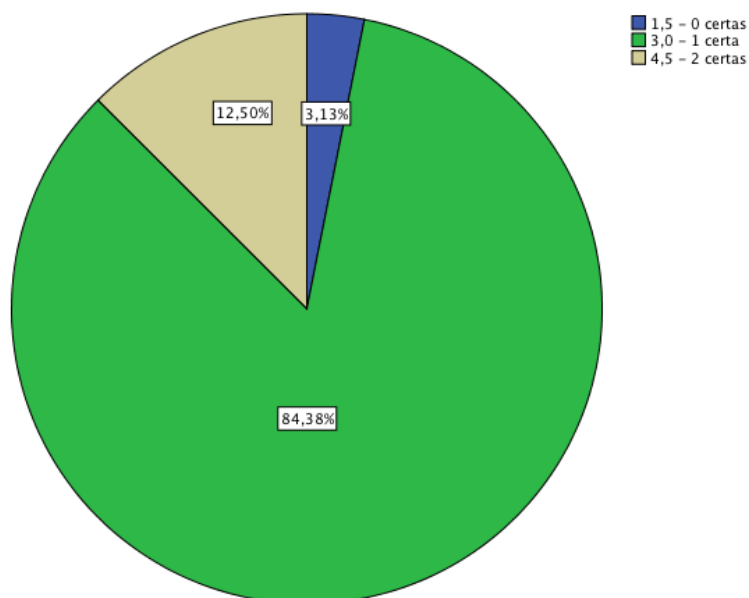
14 – "A política de risco e Compliance do BAPOP é bem compreendida por todo o Banco"



7 – Quais julga serem as áreas de maior intervenção do Compliance?



10 – Em caso de incumprimento com leis ou regulamentos, o BAPOP pode sofrer as seguintes consequências:



Appendix 4: Sample questionnaire

Appendix 5: Compliance Newsletter project, in order to provide the department with greater visibility

Appendix 6: Summary of the regression models applied to the level of compliance culture

O Compliance na Banca

Qual o seu cargo no Banco Popular Portugal?

Selecione uma das opções possíveis na célula

Em que área trabalha?

Selecione uma das opções possíveis na célula

Qual o seu grau de escolaridade?

Selecione uma das opções possíveis na célula

Qual a sua formação-base? (se seleccionou "Ensino Superior" na questão anterior)

Há quantos anos trabalha no BAPOP? (incluindo BNC, se aplicável)

18



"Consigno definir o termo Compliance"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

"O Compliance tem um forte impacto nos resultados e performance do BAPOP"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

"Hoje em dia, considero que o BAPOP dá ao Compliance:"

Complete a frase de forma a melhor se adequar à sua interpretação pessoal

Importância a menos

1	2	3	4	5
---	---	---	---	---

Importância a mais

"Sei o que fazer perante um dilema de Compliance"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

Nos últimos 3 meses, observou algum incidência de Compliance?

Se sim, qual?

"Confrontado com incidências de Compliance, sinto que deveria reagir de forma:"

Complete a frase de forma a melhor se adequar à sua interpretação pessoal

Pouco interventiva

1	2	3	4	5
---	---	---	---	---

Muito interventiva

Quais julga serem as áreas de maior intervenção do Compliance?

Escolha **apenas 2 opções**, as que considerar mais correctas, ao colocar um "x" na célula em frente

Interpretar Leis e Regulamentos Externos

Monitorizar o comportamento dos Colaboradores

Gerir e mitigar o risco de Compliance

Criar Regulamentos e Normativos Internos

"Sinto que estar em Compliance constitui um obstáculo ao meu trabalho"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

"As formações sobre o Compliance são úteis para o meu trabalho"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

Em caso de incumprimento com leis ou regulamentos, o BAPOP pode sofrer as seguintes consequências:

Escolha **apenas 2 opções**, as que considerar mais correctas, ao colocar um "x" na célula em frente

Cassação da licença de operar

Coimas aplicadas ao Banco

Suspensão temporária da licença do Banco

Banco impedido de contratar clientes adicionais

"Estou interessado em formação adicional em assuntos relacionados com o Compliance"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

Quais das seguintes razões apontaria para não ter mais interesse pelo Compliance?

Pode escolher múltiplas respostas

Pouco tempo disponível

Procedimentos morosos

Procedimentos desnecessários

Procedimentos pouco importantes

A minha função no Banco não configura este tipo de procedimentos

Outro:

Qual?

"As normas e procedimentos no BAPOP existem como uma mera formalidade e, na prática, as coisas passam-se de maneira diferente"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

"A política de risco e Compliance do BAPOP é bem compreendida por todo o Banco"

Classifique o quanto concorda com esta frase colocando um "x" por baixo da opção que deseja

Discordo Totalmente

1	2	3	4	5
---	---	---	---	---

Concordo Totalmente

Defina Compliance de forma sucinta

CMVM aperta regras à venda de Produtos Financeiros Complexos

A CMVM submeteu a consulta pública, no passado mês de Janeiro, uma proposta de regulamento ("Projecto de Regulamento sobre Informação, Publicidade e Comercialização de Produtos Financeiros Complexos") que visa alterar a maneira como os Produtos Financeiros Complexos (PFCs) são vendidos e comercializados.

Com isto, o supervisor espera colmatar algumas insuficiências regulamentares detectadas no decorrer dos 3 anos que passaram desde a entrada em vigor do Regulamento 1/2009, que estabeleceu as regras impostas à publicidade a esse tipo de produtos, no que respeita a deveres de informação e transparência.

Com esta intervenção, a CMVM espera também alcançar uma maior adequação entre a regulamentação e as necessidades do mercado, dada a crescente complexidade e variedade de PFCs que se encontra disponível hoje em dia, aliado à sua agressiva distribuição.

Adicionalmente, a entidade reguladora espera também conseguir uma maior uniformização das exigências informativas aquando da venda e distribuição de PFCs.

Toda a documentação pode ser consultada no site da CMVM.



CMVM



Esta edição:

- ✓ **CMVM e PFCs**
- ✓ **EBA**
- ✓ **FATCA**
- ✓ **Banco de Portugal**
- ✓ **Portal do Compliance**
- ✓ **Recomendações da FATF**
- ✓ **Aviso nº 10/2011**
- ✓ **RJGICC**

Directivas de Governance Interno da Autoridade Bancária Europeia (EBA)

A European Banking Authority, entidade responsável pela realização dos famosos *stress tests* aos bancos europeus, publicou no passado mês de Setembro, as suas "*Guidelines on Internal Governance*" (GL 44), que procuram consolidar

e solidificar as exigências de supervisão requeridas aos agentes financeiros de forma a que cada um individualmente, mas também o sistema como um todo, funcione bem. Estas deverão ser implementadas até ao fim de Março de 2012,



altura em que a EBA autoriza as autoridades de supervisão competentes a verificar e fiscalizar o nível de conformidade das instituições sob a sua jurisdição

Pontos mais importantes do GL 44

- Reporte directo do *Compliance* à Gestão de Topo
- Processo de decisão claro, transparente e documentado
- Política de *Compliance* claramente comunicada
- 3 pilares independentes do Controlo Interno: Auditoria Interna, Gestão de Risco e *Compliance*

Novo Portal do Compliance já disponível na Intranet do BAPOP

Já está disponível, desde o passado mês de Fevereiro, o novo Portal do Compliance, acessível a partir da página inicial da Intranet do BAPOP. O acesso poderá ser feito clicando em “Compliance”, que passará a estar na 2ª posição da lista do lado esquerdo da página, conforme pode ser visto na imagem ao lado.

Este Portal pretende aproximar-nos dos colaboradores do Banco Popular Portugal, enquanto que simultaneamente fornecendo alguns conhecimentos sobre a área de Compliance e a sua actuação e âmbito. Após entrar no Portal, verá uma imagem animada descritiva da relação do departamento com os Colaboradores e com os órgãos supervisores.

Ao clicar sobre a imagem, terá acesso à descrição completa da Área de Compliance e da sua estrutura organizativa, a envolvimento com as áreas de negócio, acções promovidas, os contactos da Área, bem como consultar a legislação mais relevante para as operações do Banco. Aí estarão disponibilizadas também as newsletters da Área de Compliance.



Grupo de Acção Financeira Internacional (GAFI) emite novas Recomendações

O GAFI ou FATF, na sua sigla inglesa (Financial Action Task Force), é um organismo inter-governamental composto por 30 países e consultado por outros 180 e que é considerado de referência na definição dos padrões que as instituições financeiras deverão seguir no combate ao branqueamento de capitais, financiamento do terrorismo e proliferação de armas de destruição maciça.

Reviu recentemente as suas recomendações, estando a última versão publicada desde o ultimo mês de Fevereiro.

Isto deveu-se, por um lado, a uma vontade de acrescentar maior flexibilidade às instituições no sentido de alocar maiores cuidados onde houver maior risco, preconizando uma abordagem baseada no risco para lidar com estas questões. Requisitos mais apertados em termos de transparência, especialmente em matéria de crimes fiscais graves, é outro exemplo da vasta transformação nas recomendações deste órgão.

Pontos mais importantes do Aviso nº 10/2011 do BdP

- Políticas de Remunerações
- Comissão de Remunerações
- Remuneração dos membros da Administração e Colaboradores: Fixa vs. Variável
- Avaliações internas da política de remunerações
- Informação devida ao mercado respeitante à política de remunerações da empresa



APB ASSOCIAÇÃO
PORTUGUESA
DE BANCOS

Aviso nº 10/2011 do Banco de Portugal estabelece regras relativas à Política de Remunerações

O Aviso n.º 10/2011 do Banco de Portugal actualiza a regulamentação relativa aos princípios gerais em matéria de políticas e práticas de remuneração, de forma a garantir uma estrutura de remuneração que não incentive a assunção excessiva e imprudente de riscos e que seja compatível com os interesses a longo prazo das instituições, definindo requisitos de divulgação exigíveis neste âmbito.

O Aviso, publicado no fim do ano passado, estabelece regras no processo de definição e aprovação da política de remuneração, prevê a criação de uma comissão de remunerações, para as instituições que correspondam a determinados critério de dimensão e volumes salariais, enquadra a remuneração dos membros da Administração assim como as indemnizações devidas em caso de destituição de funções.

Define também os critérios de remuneração dos colaboradores, distinguindo claramente entre remuneração fixa e variável, e prevê avaliações da política de remunerações levadas a cabo pelos órgãos de controlo interno. Por fim, o Aviso regulamenta a divulgação das políticas de remunerações e a informação devida nos documentos anuais de prestação de contas.

Regime Jurídico para a Gestão do Incumprimento de Contratos de Crédito (RJGICC)

A mais recente proposta do Banco de Portugal sobre esta matéria tem em conta a actual conjuntura económica e a crescente incidência de sobreendividamento sobre os clientes bancários e as consequências disso para o próprio sistema financeiro como um todo. Neste sentido, o BdP visa promover o crédito responsável. O objectivo do supervisor é prevenir o incumprimento, através da tomada das diligências necessárias por parte das instituições de crédito, e implementar procedimentos de recuperação de dívidas extrajudiciais, quando esse incumprimento se verifique. Exige também, por parte dos clientes bancários, uma gestão prudente das suas

responsabilidades e capacidades financeiras, através da comunicação de situações de risco e da colaboração na procura de soluções. O Banco de Portugal prevê 2 tipos de abordagem: na prevenção, o PARI (Plano de Acção para o Risco de Incumprimento), que consiste na rápida apresentação de soluções ao cliente que demonstre ou manifeste estar em situação de risco elevado de incumprimento. Na resolução, o BdP preconiza o PERC (Procedimento Extrajudicial para a Recuperação de Clientes bancários), que consiste na negociação entre as partes e procura activa, por ambos os agentes, de soluções ou alternativas de

reestruturação que permitam ao cliente bancário fazer face às suas responsabilidades. Os principais deveres das instituições de crédito nestes processos incluem efectuar os devidos reportes estatísticos e relacionados com o PERC e PARI ao BdP, bem como prestar informação geral sobre os riscos e as consequências do sobreendividamento e as suas soluções aos clientes. Estas propostas do supervisor estão a ser alvo de sugestões e comentários por parte dos bancos portugueses, nomeadamente através da Associação Portuguesa de Bancos.

“O nosso código fiscal parece basear-se na premissa de que o emigrante Americano é um criminoso e assim deve ser tratado”

William McGurn
Wall Street Journal

“Acreditamos que o nosso optimismo é justificado com o progresso feito recentemente na facilitação da troca global de informação”

Emily McMahon
Secretária de Estado de
Política Fiscal do Tesouro

Foreign Account Tax Compliance Act (FATCA)

O FATCA está inserido no mais recente pacote de legislação americano de incentivo à economia, o HIRE (Hiring Incentives to Restore Employment) e entra em vigor no próximo dia 1 de Janeiro de 2013. O seu objectivo é impedir os contribuintes americanos que detenham activos financeiros em instituições financeiras com sede fora dos E.U.A., de evitar as suas obrigações para com o Fisco Americano.

Após esta data, muitas instituições não americanas ver-se-ão sujeitas à obrigatoriedade de reportar anualmente ao sistema de gestão dos impostos americano (IRS) acerca de contas ou investimentos detidos nessas instituições por contribuintes americanos (vulgo, “U.S.

Person”), sejam eles particulares ou empresas. Estas instituições incluem bancos, companhias de seguros, imobiliárias, fundos de investimento e firmas de *private equity*, entre outras. Estas instituições devem chegar a acordos com o IRS de forma a elaborar parcerias dentro das quais estará prevista a troca de informações. As instituições que se recusem a fazê-lo terão que sujeitar essas contas de U.S. Person a uma taxa de retenção na fonte de 30% sobre rendimentos de diversos tipos provenientes dos E.U.A., ao mesmo tempo sendo elas próprias sujeitas a tal taxa, por parte das entidades responsáveis por esses pagamentos. Como exemplo, dá-se o pagamento de juros de uma obrigação

do Tesouro Americana, que seria taxado a 30%, caso a instituição financeira decidisse não cumprir com os requisitos do FATCA. Por aqui se vê o potencial impacto desta legislação (caso não venha a sofrer mais alterações). Implica uma escolha por parte da Banca, entre ter clientes U.S. Person ou não ter, eliminando por completo a possibilidade de uma área cinzenta. A consulta pública dura até ao fim de Abril de 2012 e comentários ou sugestões podem ser feitos por e-mail, correio ou fax, ao Departamento do Tesouro Americano ou ao próprio IRS.



Banco de Portugal com poderes reforçados

Na sequência da publicação no passado mês de Fevereiro do Decreto-Lei nº31-A/2012, o Banco de Portugal viu os seus poderes aumentar substancialmente como forma de responder à recente crise financeira internacional e os seus efeitos sobre o sistema bancário internacional.

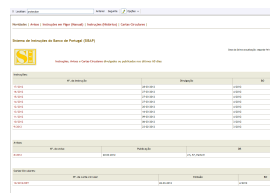
O supervisor temia que os mecanismos existentes não permitissem a adopção de medidas que conduzissem à recuperação financeira das instituições em dificuldades. Com vista a mitigar o risco de contágio a outras instituições, o Banco de Portugal passa a poder suspender o órgão de

administração de uma instituição financeira por si supervisionada e nomear os seus novos membros na totalidade.

Banco de Portugal publica Instruções nºs 15 e 16/2012

Estas duas instruções dizem respeito a depósitos contratados com taxa de juro elevada. Enquanto que a Instrução nº 15/2012 vem estabelecer novas regras para a dedução aos fundos próprios de um montante referente aos depósitos contratados com taxa de juro elevada, a Instrução nº 16/2012 vem estabelecer obrigações de envio ao Banco de Portugal de informação relativa a depósitos contratados também com taxas dessa natureza. Nesta

última, claro está, é definido também que informações fornecer ao supervisor, bem como a periodicidade e o suporte a utilizar para a conclusão desses reportes. São destinatários destas Instruções as instituições de crédito sedeadas em Portugal que estejam autorizadas a captar depósitos e as sucursais em Portugal de instituições de crédito com sede fora da União Europeia. Ambas podem ser consultadas no Sistema de Instruções do BdP (SIBAP), [aqui](#).



Nesta edição:

- ✓ **Banco de Portugal**
- ✓ **Portal do Cliente Bancário**
- ✓ **General Data Protection Regulation**
- ✓ **República Islâmica do Irão**
- ✓ **Bank for International Settlements**
- ✓ **EBA**
- ✓ **ESMA**

Portal do Cliente Bancário do Banco de Portugal



O Portal do Cliente Bancário é um portal criado pelo Banco de Portugal que visa contribuir de forma influente para o nível de literacia financeira dos consumidores em geral. É baseado na ideia de que essa literacia contribuirá também para uma maior eficiência do mercado e funcionará como um necessário complemento à sua regulação, especialmente em tempos de inovação e integração económica como os actuais, que têm levado a um

aumento da oferta e complexidade de múltiplos produtos financeiros. O Portal apresenta informação sobre várias áreas, desde taxas de juro e serviços prestados pelos Bancos a simuladores de operações financeiras e formulários para reclamações. Esta fonte de informação pode ser acedida directamente do site do Banco de Portugal.

Projecto de Regulamento relativo à Protecção de Dados (CE)

A Comissão Europeia publicou, em Janeiro último, uma primeira proposta de regulamento (*General Data Protection Regulation*) que visa substituir e fortalecer o enquadramento legal que concerne a protecção de dados pessoais na União Europeia. Caso seja ratificada, substituirá a legislação existente, nomeadamente a Directiva 95/46/EC e tornar-se-á lei, abrangendo toda a União Europeia e sem necessidade de

implementação nacional adicional. Tem como principais motivações esclarecer algumas incertezas e ambiguidades legais, colocar os indivíduos em controlo dos seus dados e reduzir o grau de incerteza a que estão sujeitas as organizações influenciadas pela legislação. O documento está disponível no site da Comissão Europeia e pode ser consultado através deste [link](#).



Regulamento nº 56/2012 da EU Medidas restritivas contra o Irão

O Conselho da UE adoptou o Regulamento nº 56/2012, em substituição do Regulamento nº 961/2010 relativo às medidas restritivas contra o Irão, onde às restrições impostas anteriormente acresce a proibição de venda, aquisição e transporte de ouro, metais preciosos e diamantes ou proporcionar serviços de corretagem para

os mesmos quando envolvam o Governo Iraniano, os seus organismos públicos, corporações, agências governamentais ou para o Banco Central do Irão, assim como para pessoas e entidades por eles detidos, que as representem ou actuem por sua conta.





“Estes Princípios devem, com o tempo, ajudar a fortalecer o sistema financeiro global através de uma mais consistente e efectiva supervisão e vigilância de conglomerados financeiros, nomeadamente em caso de riscos que advenham de entidades ou actividades financeiras não reguladas.”

Tony D'Aloisio
Chairman do Joint Forum

Joint Forum do Bank for International Settlements emite consulta pública relativa a “Princípios de supervisão de conglomerados financeiros”

O Joint Forum, instituição fundada em 1996 sob a égide do Comité de Basileia, a IOSCO e a IAIS, tem como objectivo lidar com assuntos comuns à Banca, ao sector dos seguros e aos activos financeiros.

Esta instituição emitiu, no passado mês de Dezembro, uma consulta pública que pretendia rever os Princípios de supervisão já por si instaurados em 1999, e que fornece aos supervisores e outras autoridades nacionais um

conjunto de princípios basilares para a supervisão consistente e efectiva de grandes conglomerados financeiros, especialmente aqueles que sejam multinacionais (e activos nessa vertente). A actual crise financeira teve o seu papel, ao estar na origem de muitos das lacunas e complexidades (nomeadamente aquelas transversais a empresas multi-indústrias) que se pretende sejam resolvidas com esta

proposta. Estes Princípios estão divididos em 5 secções, que passamos a enumerar: poderes supervisores e de autoridade, responsabilidade supervisora, *corporate governance*, liquidez e adequação de capital e, finalmente, gestão de risco. O período de consulta terminou no passado dia 16 de Março, pelo que se aguarda a todo o momento a proposta definitiva.

Consulta Pública – Padrões Técnicos Regulamentares de Fundos Próprios

Pontos abrangidos pelos novos RTS

- Common Equity Tier 1
- Additional Tier 1
- Deduções ao Common Equity Tier 1
- Requisitos gerais para uma redução de Fundos Próprios

A EBA publicou no início do mês de Abril um conjunto de novos princípios técnicos relativos a Fundos Próprios a ser respeitados pelas instituições de crédito. Abrange áreas como os rácios Common Equity Tier 1, Additional

Tier 1 e respectivas deduções a estes rácios. Estes novos princípios farão parte de um novo regulamento europeu que visa harmonizar a regulação europeia nesta matéria e reforçar a qualidade do capital. Pode ser consultado [aqui](#).



Consulta Pública do BIS relativa a requisitos de capital de *portfolios* bancários

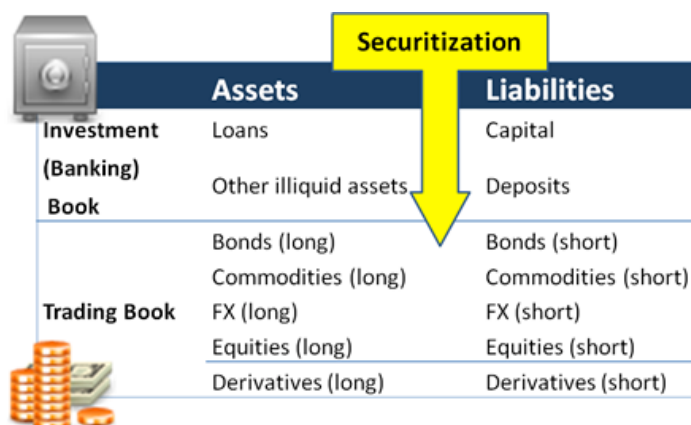
O Comité de Basileia de Supervisão Bancária emitiu no passado dia 3 de Maio uma consulta pública, na qual procura obter feedback da indústria relativamente a nova regulação. Procura, como sempre, reforçar os padrões de capital em matéria de risco de mercado e assim contribuir para um sector bancário mais forte e resistente. Outro importante objectivo é também obter níveis de capital comparáveis transversalmente a várias jurisdições. Pontos-chave da proposta: uma definição mais objectiva da fronteira entre o *trading book* (activos não transaccionados) e o *banking book* (com vista a serem transaccionados e valorizados no mercado) de forma

a impedir arbitragem reguladora e melhorar a interpretação do risco “de cauda” (baixa probabilidade) ao sugerir a transição do *Value at Risk* para o *Expected Shortfall* como medida desse risco. Feedback será aceite até ao dia 7 de Setembro de 2012 através do e-mail:

baselcommittee@bis.org. O

documento pode ser consultado

[aqui](#).



A ESMA autoriza a utilização de *ratings* de crédito de agências de *rating* argentinas e mexicanas

A Autoridade Europeia dos Valores Mobiliários e dos Mercados (ESMA) considerou, no passado dia 18 de Abril, o *framework* regulatório das agências de rating de crédito de Argentina e México como apropriados e em linha com a regulação da União Europeia. Desta forma, instituições financeiras europeias poderão continuar a usar ratings de crédito emitidos por essas entidades após o dia 30 de Abril, data limite dada pela ESMA para

agências não europeias concluírem o processo de adequação aos requisitos da União. Pretende-se possibilitar o acesso de instituições financeiras europeias a um maior número de ratings e avaliações imparciais por parte destas agências, desde que em conformidade com os requisitos, técnicos e outros, da UE. Em mente, a União tem uma maior protecção aos investidores e a criação de mercados financeiros estáveis e em bom

funcionamento. Foi já dada equivalência à legislação europeia a um número considerável de países (como Japão e Canadá) de forma a, tal como foi dito anteriormente, criar um mercado competitivo e eficiente para as agências de rating e a sua actividade, que trará inerentemente consequências positivas para os mercados financeiros.

Variable	2 variables			3 variables			4 variables			5 variables		
	<i>B</i>	<i>SE B</i>	β	<i>B</i>	<i>SE B</i>	β	<i>B</i>	<i>SE B</i>	β	<i>B</i>	<i>SE(B)</i>	β
<i>Constant</i>	3.80	0.37		3.93	0.33		3.80	0.36		3.79	0.38	
<i>Position</i>	0.13	0.06	0.48***	0.15	0.06	0.46***	0.13	0.06	0.42**	0.13	0.06	0.42**
<i>Area</i>				-0.11	0.10	-0.19	-0.13	0.10	-0.22	-0.12	0.10	-0.22
<i>Education Level</i>	-0.25	0.15	-0.30*	-0.28	0.15	-0.33*	-0.24	0.16	-0.28	-0.19	0.37	-0.23
<i>Education Area</i>							0.14	0.06	.08*	-0.03	0.20	-0.06
<i># Years</i>										0.03	0.05	0.15
R^2		0.22			0.25			0.27			0.28	
<i>F</i> for change in R^2		3.97**			1.26			0.21			0.94	

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$